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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,382	04/13/2006	Dieter Grimm	IT20030040/72005-0157	8485
173	7590	11/23/2009	EXAMINER	
WHIRLPOOL PATENTS COMPANY - MD 0750			HECKERT, JASON MARK	
500 RENAISSANCE DRIVE - SUITE 102				
ST. JOSEPH, MI 49085			ART UNIT	PAPER NUMBER
			1792	
			MAIL DATE	DELIVERY MODE
			11/23/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/595,382	GRIMM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JASON HECKERT	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 July 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-13, 15 and 16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Due to the applicant's amendments to the claims, the previous rejections are rendered moot.
2. Additionally, the arguments are not persuasive. The curved bottom of the tub is inclined, and it collects fluid as it departs from the tub. "Drainage behavior" is an incredibly broad term, and the time, water level, and flow rate are considered to read on drainage behavior.
3. Additional art is presented in the following rejection to obviate the types of sensors and the location of sensors.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2-6, 15-16 rejected under 35 U.S.C. 102(b) as being anticipated by EP 1096051 ('051). '051 teaches a washing appliance comprising a tank 4, a drum 5, a controller 12, an inclined drain surface provided on the tank directing the fluid toward drain tube 6 and at least two measuring instruments 8 and 9 connected to a controller. The measuring instruments provide information of the water collected in the inclined surface, specifically level and drainage time. These values read on "drainage behavior". The sides of the tub read on guide edges. The area is inside the tub. Drainage tube 6

have a different angle than the bottom of the tub. In regards to claim 5, two sensors are present at different locations and therefore different angles. The control of the outlet valve 3 can control drainage over time. Thus, the structures are present that allow for drainage to occur over preset times.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over '051 in view of EP 1156318 ('318). '051 does not teach measuring drops of water. '318 discloses a measurement device to determining the properties of a fluid that comprises two inclined surfaces 7a and 7b. Drops can be counted (paragraph 22). The device measures viscosity. It would have been obvious at the time of invention to modify '051 and include the device of '318, in order to measure the viscosity of the fluid.

8. Claim 7, 9, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '051 in view of Severns. '051 does not disclose optical, conductive, or capacitive sensors. Severns teaches that level sensor 44 can be conductive, capacitive, or optical and that they can be located along the tank wall, just as in '051. Thus, it would have been obvious at the time of invention to modify '051, and include optical, capacitive, conductive sensors, or combinations thereof, in order to detect fluid level.

9. Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over '051 in view of Severns and in further view of DE19821148 ('148). '051 and Severns disclose the use of level sensors and obviate capacitive, conductive, and optical sensors but do not disclose much in the way of location, other than the bottom or side of the apparatus. '148 teaches locating level sensors along the bottom of the apparatus, the inclined drain tube, the sides of the tub, and in the vicinity of the pump (see abstract). That is, '148 discloses locating the level sensors in various areas that read on "bottom portion" or "collection vessel". The combination of the above references possesses the same structure, and is therefore believed to be capable of operating in a similar manner. It would have been obvious at the time of invention to locate the level sensors in different areas of the machine, as taught by '148, in order to detect the level and drainage time.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/  
Supervisory Patent Examiner, Art  
Unit 1792

JMH